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SERVICE DATE - MAY 24, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 411X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY—ABANDONMENT EXEMPTION—IN LAWRENCE COUNTY, AR

Decided: May 20, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon and discontinue service over a 4.50-mile line of railroad between milepost 397.78 in Hoxie, and milepost 402.28 in Walport, and the 2.20-mile Walnut Ridge Industrial Spur, a total distance of 6.70 miles in Lawrence County, AR. Notice of the exemption was served and published in the Federal Register on April 26, 2004 (69 FR 22595-96). The exemption is scheduled to become effective on May 26, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment in this proceeding on April 30, 2004. In the EA, SEA states that the National Geodetic Survey (NGS) advised that four geodetic station markers may be affected by the proposed abandonment and requested 90 days' notification in advance of any activities that may disturb or destroy these markers. Therefore, SEA recommends that BNSF be required to notify NGS 90 days prior to salvage activities to plan for the relocation of the station markers.

SEA also states that the Department of Arkansas Heritage (SHPO) has indicated that there are nine archaeological sites (3LW101, 3LW357, 3LW358, 3LW363, 3LW364, 3LW365, 3LW375, 3LW558, and 3LW718) and three standing structures (LW0037 - Missouri Pacific R.R. depot, LW0064 - Johnson Motor/Travel Court, and LW0076 - Little's Bait Shop) located near the line proposed for abandonment. Of the above sites, three archaeological sites (3LW358, 3LW363, and 3LW364) and two structures (LW0037 and LW0064) are located directly beside the line. Only LW0037 has been determined eligible for the National Register of Historic Places (National Register). In addition to the above sites, two wooden bridges constructed in 1924 are located within the area of the proposed abandonment. The SHPO states that neither bridge is eligible for the National Register.

The SHPO has indicated that the abandonment activities will have no effect on historic properties if the three archaeological sites (3LW358, 3LW363, and 3LW364) and two structures (LW0037 and LW0064) are avoided during project implementation. Although the SHPO can provide

BNSF with the location of the standing structures, the locations of the archaeological sites must be determined by a professional archaeologist. The SHPO thus recommends that a professional archaeologist confirm the archaeological site locations so that they can be avoided prior to the start of salvage activities. Therefore, SEA recommends that BNSF be required to retain its interest in and take no steps to alter the historic integrity of all sites and structures that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Finally, SEA states that the Arkansas Department of Environmental Quality (ADEQ) states that a storm permit is required for any construction site that disturbs one or more acres of land area. Therefore, to address the concerns raised by ADEQ, SEA recommends that BNSF be required, prior to commencement of any salvage activities on this project, to contact the ADEQ, concerning possible impacts on water quality and any water quality permitting requirements.

The conditions recommended by SEA will be imposed.

On April 14, 2004, Lawrence County, AR (Commenter) filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail. Commenter submitted a statement of its willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or the use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail services. By reply filed April 19, 2004, BNSF indicated that it does not object to issuance of a notice of interim trail use.

Because Commenter's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line, provided the environmental conditions imposed in this decision have been satisfied. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on April 26, 2004, exempting the abandonment of the line is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the May 26, 2004 effective date of the exemption (until November 22, 2004), and subject to conditions that BNSF shall: (a) notify NGS 90 days prior to salvage activities to plan for the relocation of the four geodetic station markers; (b) retain its interest in and take no steps to alter the historic integrity of all sites and structures that are 50 years old or older until completion of the section 106 process of the NHPA; (c) prior to commencement of any salvage activities on the project, contact the ADEQ concerning possible impacts on water quality and any water quality permitting requirements.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligation for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by November 22, 2004, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided that the conditions imposed in this decision are met.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary